

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 2537 of 1998

in

SPECIAL CIVIL APPLICATION No 2148 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

1 Yes

2 to 5 No

RASILABEN M SHAH

Versus

JAYANTILAL H PATEL

Appearance:

MS. SEJAL SUTARIA for MR VH DESAI for Petitioner
MR DAXESH T DAVE for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 01/07/1999

ORAL JUDGEMENT

Per R. Balia, J.

One Rasilaben M. Shah was serving with Uma Primary School, Fulvadi Park, Isanpur, Ahmedabad, which was managed and run by Shri Ramvidhyo Tejak Trust. The trustee managing the said trust is one Jayantibhai H. Patel. Said Rasilaben was not allowed to resume her duties on 15.10.89 resulting in termination of her services. The matter was taken before the Gujarat Primary Education Tribunal. The Tribunal, by its order dated 12.10.1995, held the action of the school illegal and ordered reinstatement of the petitioner and directed the school authorities to make the payment of difference between the actual wages paid and wages which were required to be paid under rules for the period 22.5.86 to 15.10.89 within three months. Respondents were also directed to make payment of the arrears of salary with effect from the date of termination of services to the date of reinstatement. The respondents did not implement this order for long which led Smt. Rasilaben to file Special Civil Application No. 2148/98 against (1) Shri Jayantibhai H. Patel, the Trustee and Mantri of the Trust, (2) The Principal, Uma Primary School, (3) District Education Officer and (4) District Primary Education Officer, Municipal Corporation, somewhere in March 1998. This Court, while issuing notice on 24.3.98 on the said special civil application, by interim order, directed the respondents to comply with the order of the Primary Education Tribunal dt. 12.10.95. Respondents No. 1 & 2 did not choose to appear in response to said notice. In the circumstances, on 17.7.98, bailable warrants were issued to secure the presence of respondents No. 1 & 2. Thereafter, on 8.10.98, the Court, in the presence of learned counsel for the parties including that of the respondent No. 1, Jayantibhai H. Patel, the trustee and Secretary of the School, directed respondents No. 1 & 2 to comply with the order of the Tribunal on or before 16.10.98 and to pay difference of salary directed by the Tribunal and to pay the amount of salary with all other allowances from the date of the order of the Tribunal. Respondents No. 1 & 2 were further directed to file pursis before the court regarding the compliance of the order by 16.10.98. No compliance of these directions were either made by 16.10.98. On a grievance being made about non-compliance of the order dated 8.10.98, the court noticed that instead of being regretful on behalf of respondents No. 1 & 2, learned counsel had submitted that the last date was 16.10.98 and since he was busy with some other matters, he is now producing the pursis and that order

will be complied with. The pursis purporting to be dated 16.10.98 was produced with the letter dated 15.10.98 addressed to the Principal purported to be signed by the petitioner Smt. Rasilaben with an endorsement by Smt. Rasilaben that she would remain present on 6.11.98 Friday. The signatures of Smt. Rasilaben Shah on the said documents were denied by the applicant Smt. Rasilaben and alleged it to be forged one. The court entertained a suspicion about the genuineness of the said document and felt necessity of a probe. It was stated on behalf of respondent No. 1 before the court on 9.11.98, as under:

"He has also submitted that the order dt. 8.10.98 shall be complied with by tomorrow and all the arrears, as ordered by the Tribunal, shall be made available into the hands of the petitioner".

2. With this statement having been made in the court, the court recorded further,

"It is open for the respondent No.1 to comply with the order dt. 8.10.98 and pay the due amount of arrears into the hands of the petitioner even now, but the fact remains that the respondent No.1 has to explain as to why the order dt. 8.10.98 has not been complied with so far and he has also to show cause as to whether the document dt. 15.10.98 produced on his behalf by Mr. D.T. Dave, Advocate, is duly signed at the bottom by the petitioner Smt. Rasilaben M. Shah."

3. The matter was posted on 10.11.98. On 10.11.98, respondent No.1 Shri Jayantibhai H. Patel was not present but some other trustee was present. No explanation was furnished against initiation of contempt proceedings except stating that amount could not be paid as government grant has not been received. It was informed by Mr. Dave, learned counsel for respondent No.1 Shri Jayantibhai H. Patel, that in pursuance of instruction dt. 8.10.98 the applicant has not been taken on duty until that day i.e. 10.11.98 admitting that no payment has been made to the applicant whether as directed by the Tribunal or in compliance of the direction issued by this court on 8.10.98. However, it was stated that applicant has been taken on duty on that day. The court also observed that compliance of order dt. 8.10.98 was not dependent on receipt of the government aid by the respondents and the matter was directed to be placed before the Division Bench hearing contempt matters for taking contempt proceedings against

respondent No. 1 on the basis of orders made by this court on 17.7.98, and 8.10.98 and observations made in the order dt. 9.11.98. Incidentally, so far as matter related to considering launching prosecution against respondent No.1 was concerned, the matter was adjourned to 11.11.98. About that aspect of the matter, we are told that after the applicant was taken back on job, she expressed her desire not to proceed against respondent No.1 in the matter of prosecution for the forged signatures on the document. Accepting that request the matter was dropped by order dt. 23.11.98, a copy of which was placed on record.

4. It is in pursuance of reference made by learned single Judge on 10.11.98, the Division Bench of this Court issued notices of this application on 17.11.98. Since then the matter has been adjourned from time to time. Presence of respondeat No.1 Shri Jayantibhai H. Patel was secured through service of bailable warrants. Today Mr. Jayantibhai H. Patel is present in person represented by his learned counsel Mr. D.T. Dave. A reply affidavit has been filed stating that initiation of proceedings in this case are barred by time. The defence taken in the affidavit in substance reads as under:

"I further say that I have very high regard and respect to the order passed by this Hon'ble Court but I say that the respondent's school is not receiving any grant from the Government and financially the opponents school is very weak and unable to afford the salaries of the present petitioner. The petitioner in fact, not entitled to be reinstated for the post of Teacher because she is not qualified teacher and she is not educationally fit for the said post she herself has stated before the Hon'ble Primary Education Tribunal regarding this fact, the depositions are also produced alongwith the set of memo filed by the present petitioner which clearly goes to show that she is not educationally qualified and her name is also not shown in the school register/muster roll but inspite of this clear position of law the Ld. Tribunal did not consider the documents properly and passed the order dtd. 12.10.95 in application No. 12/90 which is a subject matter of present petition. I say that I have already filed my affidavit in reply dtd.. 6.10.98 in above referred special civil application and hence categorically stated that the petition itself is not maintainable in the eye of law and same is barred by law of

limitation but inspite of this above referred orders were passed by the Ld. Single Judge and lastly ld. Single Judge passed the order dt. 23.11.98 where it is observed that regarding false document dtd. 15th October 1998 the proceedings are dropped thus, it is crystal clear that the opponent has not produced any of the false document before this Hon'ble Court ad did not even try to mislead the Ld. Single Judge inspite of this the Ld. Single Judge narrated the present respondent to reinstate the petitioner with backwages and to comply with the order passed by Primary Education Tribunal. I say that there is no disobedience of the order passed by this Hon'ble Court."

" I say that present petition is itself not maintainable in the eye of law because same is filed after the expiry of limitation period. The petitioner has come before the Ld. Single judge for the compliance of order dtd. 12.10.95 passed in application No. 12/90 decided by Primary Education Tribunal after a lapse of 4 years which is admittedly not maintainable and no contempt petition is maintainable after the expiry of prescribed time limit of one year. In the present case the same is filed after the expiry of limitation period and Ld. Single Judge has not considered any of the contention raised by the opponent and therefore this suo motu application for contempt is also not maintainable in the eye of law and hence same is required to be rejected."

5. The same contentions have been reiterated before us by the learned counsel for the respondents. Having considered the submissions made before us, the facts stated in the affidavit-in-reply and proceedings of the court, we are of the opinion that respondent No.1 has shown callous disregard to comply with the orders passed by this Court and has adopted a recalcitrant attitude throughout.

6. The plea as to initiation of contempt proceedings in the present case being barred by time, in our opinion, is misconceived. Special Civil Application No. 2148/98 was not for initiating contempt proceedings for non-compliance of the orders made by Primary Education Tribunal nor learned single Judge has referred the matter for the Division Bench hearing contempt cases to initiate proceedings in respect of any alleged breach of the order

passed by the Primary Education Tribunal. The matter referred to the Division Bench was for non-compliance of order of this court dt. 8.10.98. The special civil application was for seeking a mandamus to the respondents for implementing the award of the Primary Education Tribunal which undoubtedly had been made on 12.10.95 and does not appear to have been challenged at any quarters and has become final between the parties. The award of the adjudicatory body now governs the rights of the parties emanating therefrom. The special civil application was to enforce those rights and not for initiating contempt proceedings. It was in the course of those proceedings for the enforcement of rights emanating from the order passed by Primary Education Tribunal that this Court, in the first instance, issued directions on 24.3.98 in Special Civil Application No. 2148/98 that the respondents shall comply with the order dated 12.10.95 passed in Application No. 12/90 by the Gujarat Primary Education Tribunal and they were also directed to furnish an affidavit pointing out why said order was not still complied with. The respondents showed first recalcitrance by not appearing lest they may be asked to comply with the direction issued at interim stage. That compelled the court to make an order on 17.7.98 to secure presence of respondent No.1 Mr. Jayantibhai H. Patel and respondeat No. 2 Principal of the school by issuing a bailable warrant. It was in pursuance of this order that he respondents for the first time came to respond. The direction to comply with the order of the Tribunal dated 12.10.95, therefore, for the first time came to be issued by this court on 24.3.98. There is no dispute that this direction 'to comply with the Tribunal's order' has not been complied with by the respondents at anytime. Thereafter, on 8.10.98, as noticed above, the Court, finding the attitude of respondents No. 1 & 2 to be recalcitrant, and by overruling technical objections, against entertaining the petition after lapse of 3 years on the ground of laches, and refusing to allow the respondents to challenge the validity of order passed by the Tribunal in the proceedings initiated by the applicant for implementation of the award, directed to comply with the order of the Tribunal on or before 16.10.98 and to pay difference of salary directed by the Tribunal and to pay the amount of salary with all other allowances from the date of the order of Tribunal. Respondents No. 1 & 2 were further directed to file a pursis before the court regarding the compliance of the order on 16.10.98.

7. It is not in dispute that on 16.10.98 the compliance of order dt. 8.10.98 was not made. The

explanation furnished about non-compliance of the order dated 8.10.98 was found to be of suspicious nature as is reflected in the order of this Court dt. 9.11.98. So much so that the court was prima facie of the view that document produced by respondent No. 1 & 2 appears to be forged and needs a probe. Having made known to the respondents that the orders of the court dated 8.10.98 had been flouted, it was submitted to the court by Mr. Dave, learned counsel for respondent No. 1 as under:

"He has also submitted that the order dt. 8.1.98 shall be complied with by tomorrow and all the arrears as ordered by the Tribunal shall be made available into the hands of the petitioner."

Thus, as late as on 9.11.98 respondents No. 1 & 2 assured the court that the order of the Tribunal shall be complied with as directed by the Tribunal on 8.10.98. No reservation was shown on 9.11.98 about the compliance. We may notice here that grievance as to non-availability of grant having already been made earlier not found favour with the court was pleaded as a shelter for not complying with the direction as to pay arrears of salary on 9.11.98 and a positive assurance was given to the court that arrears shall be paid by the next date. On 10.11.98 only compliance in respect of taking back the applicant on duty was reported but no inclination was shown to abide by the directions in respect of payment of arrears. To repeat, the court in its order dated 8.10.98 has specifically directed the respondents to pay difference of salary directed by the Tribunal and to pay the amount of salary with all other allowances from the date of the order of the Tribunal. This part of the order having been made notwithstanding plea of the laches, the contentions on the merit of the award and other technical objections in any sense cannot be said to be a direction of the Tribunal in respect of which these proceedings are initiated, after initiation of proceedings by issue of notice.

8. After appearing on the first date of hearing in person and thereafter through his counsel on 15.4.99 the learned counsel undertook to keep respondent No. 1 Mr. Jayantibhai H. Patel present on the next date of hearing. It appears that on the next date of hearing, that is to say, on 15.4.99, Mr. Patel did not respond to the order and again bailable warrant had to be issued on 30.4.99 to secure his presence and thereafter reply affidavit has been filed on the last date of hearing on 22.6.99.

9. From the aforesaid facts it is apparent that the proceedings have been initiated for non-compliance of orders made by this Court on 8.10.98 and subsequent orders made to seek compliance of the said order. It cannot be said that the initiation of proceedings for non-compliance of direction contained in these orders are on any grounds beyond the period of limitation prescribed u/s 20 of the Contempt of Courts Act 1971 in respect of disobedience of which proceedings could not be initiated. This is apart from the fact that it is highly doubtful whether the provision of sec. 20 applies to exercise of suo motu power by the High Court as a court of record under Art. 215 of the Constitution when the proceedings are not initiated under the Contempt of Courts Act.

10. Like before the learned single Judge, in this proceeding also another plea which respondent No.1 has sought to raise in his affidavit and during the course of arguments that the award passed by the Primary Education Tribunal on 12.10.95 is not valid one. This plea too is not bona fide. Suffice it to state, once an adjudicatory body entrusted with the task to decide a particular dispute has adjudicated in the matter, it binds the parties unless it is set aside in accordance with the proceedings and precedents known to law or it can be shown to be void non est which can be ignored. No plea ever was taken that order was made by a Tribunal having no jurisdiction and is a nullity. No party on its own in another proceedings can ignore the outcome of the order by finding fault with its finding or alleging it to be erroneous unless it can be shown to be void ab initio amounting to nullity which can be ignored. It is not the case that the Primary Education Tribunal had no jurisdiction to decide the dispute entertained by it and because of the inherent lack of the Tribunal the award made by it is a nullity which can be ignored without being set aside in appropriate proceedings. Obviously, learned single Judge, while considering the matter, did not permit for this reason to challenge the findings recorded in the award which was sought to be enforced through special civil application filed by the applicant lest it would have resulted in converting special civil application for enforcement of rights into challenge to the award on merits. Whether the court in its discretion entertains the petition for enforcement of a right after a lapse of period or not is not subject to any straightjacket formula. The petition under Art. 226, it is well-settled, are not governed by law of limitation but are governed by discretion of the court which the court exercises in each case depending on facts and circumstances of the case. We are further told that in

fact after the court refused permission to raise objection as to enforceability of award on the ground of it being erroneous, the respondents did challenge the award of the Tribunal by Special Civil Application and that has been rejected. Yet to defend the act of non-compliance on the ground of error in the award on merit shows the reticence of respondent No. 1.

11. It is also apparent from the affidavit filed by Mr. Patel that the school is not receiving any grant from the Government at any time, that is to say, the liability to make payment of salary to its employees is of the trustees and in no way dependent on the grant received from the government. That being so, the fact that the respondents are not receiving grant from the government cannot be a circumstance which could warrant any sympathetic view for attributing bona fide to the respondents in not complying with the directions of this court in spite of having undertaken to do so on 9.11.98 as noticed by us above. Even so, considering the fact that the respondents have pleaded the want of grant from the government as the ground for non-compliance immediately with the directions, we suggested to give some time to respondent No.1 even now to comply with the order. Learned counsel, in consultation with the said Mr. Jayantibhai Patel, who was present in court, said that he is not willing to do that. At no stage respondent No. 1 has shown his regret or apology for non-compliance of the orders made by this Court.

12. It may further be noticed that, while respondents have pleaded want of government grant as reason for not paying arrears as per direction, no impediment was ever shown to exist or pleaded in taking the applicant on duty since 24.3.98 when the court made order to comply with the award for the first time or after specific order was made on 8.10.98. On the other hand, the compliance was sought to be avoided by resorting to a document of doubtful character.

13. In the aforesaid circumstances, the wilful disobedience of the orders made by this court on 8.10.98 and thereafter referred to above are writ large on the face of it and the applicant neither being repentant nor being willing even now to see the compliance of the order, the matter has to be taken seriously. Thus, having found respondent No. 1 Mr. Jayantibhai H. Patel who is a Trustee and Secretary of the school, responsible for the management of the school where Smt. Rasilaben M. Shah is employed, we hold him responsible for wilful disobedience of the orders of this Court referred to

above and is sentenced to civil imprisonment for one month and a fine of Rs. 2000/-. On failure to pay fine he is to further undergo simple imprisonment of one week.

13. Learned Counsel for respondent No.1 prays that the sentence be suspended for a period of 8 weeks in order to enable him to seek his remedies. The sentence is accordingly suspended for a period of 8 weeks as prayed.

14. Respondent No.2 being not directly responsible, we discharge notices against him. Respondents No. 3 and 4 are not connected with non-compliance, hence notices against them are also discharged.

(hn)